

## 37 Am. Jur. 2d Fraud and Deceit § 75

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### Fraud and Deceit

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#### IV. False Representations

##### B. Necessity that Representation Be of Fact; Opinions

##### 3. Qualifications of, and Exceptions to, Rule Holding Opinions Nonactionable

###### a. In General

### § 75. Superior knowledge, or asserted superior knowledge, of person making representation

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#### West's Key Number Digest

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When a speaker purports to have special knowledge of the facts<sup>1</sup> or does have superior knowledge of the facts,<sup>2</sup> a party may maintain a fraud action based on the speaker's statement of opinion. As it is sometimes stated, the rule is that if the person expressing the opinion possesses superior knowledge, and it is a justifiable conclusion that he or she intended untruly to imply knowledge of facts such as would justify the opinion, the opinion may be regarded in law as an assertion of fact and not honestly entertained.<sup>3</sup> "Superior knowledge" in this context is a term of art which contemplates more than the possession by one party to a bargain of a greater acumen than is possessed by the other party; the concept is applied primarily in situations where assumed knowledge possessed by the party expressing the fraudulent opinion is a motivation to the other to enter into the transaction, or where the defendant has held him- or herself out as particularly knowledgeable.<sup>4</sup>

Further, where only the representor is in a position to know the information necessary to form an opinion regarding a particular matter, then those opinions may form the basis for an action for fraud.<sup>5</sup>

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#### Footnotes

<sup>1</sup> [GJP, Inc. v. Ghosh](#), 251 S.W.3d 854 (Tex. App. Austin 2008).

<sup>2</sup> [Lui Ciro, Inc. v. Ciro, Inc.](#), 895 F. Supp. 1365 (D. Haw. 1995) (applying Hawaii law); [Baker v. United Services Auto. Ass'n](#), 661 So. 2d 128 (Fla. 1st DCA 1995); [Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of America](#), 341 S.W.3d 323 (Tex. 2011).

<sup>3</sup> [Bank of America Nat. Trust & Sav. Ass'n v. Hutchinson](#), 212 Cal. App. 2d 142, 27 Cal. Rptr. 787 (2d Dist. 1963)

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(superior knowledge or special information); *Bethlahmy v. Bechtel*, 91 Idaho 55, 415 P.2d 698 (1966); *Forest v. Elliott Truck & Tractor Sales, Inc.*, 29 A.D.2d 1031, 289 N.Y.S.2d 431 (3d Dep't 1968), order aff'd, 23 N.Y.2d 952, 298 N.Y.S.2d 730, 246 N.E.2d 531 (1969).

<sup>4</sup> *Pacesetter Homes, Inc. v. Brodtkin*, 5 Cal. App. 3d 206, 85 Cal. Rptr. 39 (2d Dist. 1970).

<sup>5</sup> *Magnaleasing, Inc. v. Staten Island Mall*, 428 F. Supp. 1039, 23 Fed. R. Serv. 2d 1569 (S.D. N.Y. 1977), judgment aff'd, 563 F.2d 567 (2d Cir. 1977).

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